

of the goods and services provided under the Swan Ball name. As a result, **only** the Committee owns the SWAN BALL mark.¹

- Cheekwood claims SBI did not provide any authority showing that volunteers can own a trademark. This is false. SBI cited, among others, **Southern California Darts Ass’n v. Zaffina**, where the court held that unincorporated associations can indeed own trademarks. SBI Resp. at 21. In any event, Cheekwood’s characterization of the Committee as “volunteers” is irrelevant to the agency analysis in the absence of any showing of a right to or actual control of those volunteers. The Swan Ball Committee, functioning as an unincorporated association for decades, owns the SWAN BALL mark, and SBI is its rightful successor.
- Cheekwood submits statements from three former Swan Ball co-chairs alleging Cheekwood’s control over the event. However, two of these statements are directly contradicted by their own co-chairs from the same years, the third co-chair has sadly passed away. *See* Statement of Em Crook, who co-chaired the Swan Ball in 1988 with Mary Simonson, attached to SBI’s response as page 14-15 of Exhibit 8; SBI anticipates filing the forthcoming Statement of Carole Sergeant, Co-Chair of Swan Ball in 1997 with Josephine Sergeant later today, Ms. Sergeant is currently unavailable for signature.

Cheekwood's entire argument is built on unsupported assertions. The SWAN BALL mark has always been, and continues to be, owned by the Swan Ball Committee. Cheekwood will be

¹ Cheekwood’s 2004 state registration of the SWAN BALL mark in Tennessee is largely irrelevant, given that the inquiry under trademark law is what entity controls the nature and quality of the goods and services under the mark. Even if the mark was valid when registered (it was not; the registration is *void ab initio* for a number of reasons), SBI has submitted to this court the statement of Jack Becker, CEO of Cheekwood from the year the mark was registered and for the six years afterward, stating that Cheekwood did nothing to control the nature and quality of the Swan Ball.

unable to prove its ownership of the mark at trial, and its Motions for Temporary Restraining Order and Preliminary Injunction must be denied.²

Respectfully submitted,

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² Cheekwood questions the characterization and accuracy of citation of a few authorities relied on in SBI's Response. SBI's counsel had severely limited time to draft the Response, *see* D.I. 27, and will notify the Court promptly if it determines that any corrections regarding its use of these authorities are warranted.

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024 a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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